UNITED STATES PATENT AND TRADEMARK OFFICE



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Paper No.

CAMPBELL STEPHENSON LLP 11401 CENTURY OAKS TERRACE BLDG. H, SUITE 250 AUSTIN TX 78758

> COPY MAILED DEC 1 1 2008

In re Application of

Joshi et al.

Application No. 10/609,363

: LETTER REGARDING

Filed: June 27, 2003

PATENT TERM ADJUSTMENT

Atty Docket No. VRT0010C1US

This is in response to the "COMMENT ON PTA CALCULATION," filed July 24, 2008. Pursuant to their duty of candor and good faith to the Office, applicants disclose that the initial determination of patent term adjustment at the time of the mailing of the notice of allowance of five hundred twenty-nine (529) days is incorrect.

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The request for review of the patent term adjustment is GRANTED.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is four hundred sixtythree (463) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On April 24, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 529 days. Applicants note that a Request for Continued Examination (RCE) was filed on May 21, 2007 (received in the Office on May 25, 2007).

A review of the record confirms that in response to the final Office action mailed December 20, 2006, applicants did not file an RCE until May 25, 2007, three months and 66 days later. CFR 1.704(b) provides that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

The filing of the RCE on May 25, 2007 constituted a failure to engage within the meaning of 37 CFR 1.704(b). For which, a period of reduction of 66 days, counting the number of days in the period beginning on March 21, 2007, the day after the date that is three months after the date of mailing of the final Office action, and ending on May 25, 2007, the date of filing of the RCE, should have been entered. It is noted that as stated in 37 CFR 1.703(f), "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. also, Comment 10, Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 65 Fed. Reg. 54366 (September 18, 2000). Thus, the date of receipt and not of mailing of the RCE is properly used for purposes of calculating the patent term adjustment.

Given entry of the additional 66 day period of reduction, the correct initial determination of the patent term adjustment at the time of the mailing of the notice of allowance is four hundred sixty-three (463) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded and the period is not consumed by the request for continued examination).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Day: Wednesday

Date: 12/10/2008



PALM INTRANET

Time: 17:45:13

PTA Calculations for Application: 10/609363								
Application Filing Date: 06/27	7/2003	PTO Delay (PTO):	654					
Issue Date of Patent:		Three Years:	0					
Pre-Issue Petitions: 0		Applicant Delay (APPL):	125					
Post-Issue Petitions: 0		Total PTA (days):	463					
PTO Delay Adjustment: -66								

File Contents History								
Number	Date	Contents Description	PTO	APPL	START			
63	12/10/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		66				
49	04/24/2008	MAIL NOTICE OF ALLOWANCE						
48	04/24/2008	ISSUE REVISION COMPLETED						
47	04/24/2008	DOCUMENT VERIFICATION						
46		EXAMINER'S AMENDMENT COMMUNICATION						
45	04/24/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED						
44	03/28/2008	NOTICE OF ALLOWABILITY						
40	01/18/2008	DATE FORWARDED TO EXAMINER						
39	12/28/2007	RESPONSE AFTER NON-FINAL ACTION		91	37			
38	12/28/2007	REQUEST FOR EXTENSION OF TIME - GRANTED						
37	06/28/2007	MAIL NON-FINAL REJECTION						
36	06/22/2007	NON-FINAL REJECTION						
		DATE FORWARDED TO EXAMINER						
34	05/25/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE						
33	06/05/2007	DATE FORWARDED TO EXAMINER						
32	05/25/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)						
31	06/05/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)						
30	05/25/2007	REQUEST FOR EXTENSION OF TIME - GRANTED						
29	05/25/2007	WORKFLOW - REQUEST FOR RCE - BEGIN						
28	12/20/2006	MAIL FINAL REJECTION (PTOL - 326)						
27	12/18/2006	FINAL REJECTION						

26	10/23/2006	DATE FORWARDED TO EXAMINER			
25	10/16/2006	RESPONSE AFTER NON-FINAL ACTION		28	22
24	10/04/2006	MAIL NOTICE OF INFORMAL OR NON- RESPONSIVE AMENDMENT			
23	10/04/2006	DATE FORWARDED TO EXAMINER			
22.1	09/18/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
22	09/18/2006	RESPONSE AFTER NON-FINAL ACTION		6	21
21	06/12/2006	MAIL NON-FINAL REJECTION			-1
20	06/06/2006	NON-FINAL REJECTION			
19		INFORMATION DISCLOSURE STATEMENT CONSIDERED			
18	05/02/2006	CASE DOCKETED TO EXAMINER IN GAU			
17	03/09/2006	CORRESPONDENCE ADDRESS CHANGE			
16	07/15/2005	MISCELLANEOUS INCOMING LETTER			
15		IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	01/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
13	11/18/2004	REFERENCE CAPTURE ON IDS			
12.7	11/18/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	11/18/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	06/27/2003	PRELIMINARY AMENDMENT			
10	04/08/2004	CORRESPONDENCE ADDRESS CHANGE			
9	04/07/2004	CORRESPONDENCE ADDRESS CHANGE			
8	09/24/2003	APPLICATION RETURN FROM OIPE			
7	09/24/2003	APPLICATION RETURN TO OIPE			
6	09/24/2003	APPLICATION DISPATCHED FROM OIPE			
5	09/24/2003	APPLICATION IS NOW COMPLETE			
4	09/03/2003	CASE CLASSIFIED BY OIPE			
3	09/03/2003	CLEARED BY OIPE CSR			
2	08/07/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/27/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

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